

Claim 4, first line, after "selected", delete "seeds" and add -seed-.

**REMARKS**

Claims 1 through 5 remain in the case after this amendment.

Applicant noted the rejection of Claims 1, 4 and 5 under 35 USC 102(b), citing U.S. Patent No. 4,124,953 to Patton. Applicant respectfully takes except to this rejection on the basis that item #30 is not a sack. Rather, as set out at column 2, lines 59 and 60, it is "A dry, compressed growing medium in the form of a pellet 30 is disposed in a space 28". Which space 28, at column 2, lines 57 - 59, is defined as, the bottom 22 of the cover is spaced from the base of the container, defining a space 28 therebetween.", with the pellet 30 to rest in which space. Which space receives the compressed pellet of growth medium that, as set out at column 2, line 61, that is, "a dry, compressed peat, containing fertilizer". Further, while the compressed pellet of growth medium #30, as set out at column 2, lines 67 and 68 and column 3 first line, is "surrounded by an expansible netting which holds the peat together after soaking and expansion" the netting does not enclose seeds. Rather, unlike the invention as now clearly claimed in Claim 1, Patton at column 3, lines 7 and 8, sets out that "the upper surface of the pellet 30 has a recess 32 in which seeds 34 are deposited". While, of course, netting is mentioned as covering the growth medium #30, it is not shown. From the description, however, it is clear that the seeds rest on the netting in recess 32 and root through the netting and into the growth medium #30. This is unlike the invention, as now clearly called for with the amendments to Claim 1, that sets out that the growth medium and mix of seeds are contained in a closed pouch, with the seeds to sprout through the mesh material of the pouch. This arrangement of the invention provides for its utility in that as seedlings are grazed off from a section of the pouch

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material, the pouch is rotated to provide added grazing for a pet. This function is clearly unlike that of the Patton patent that is a planter for protecting a live plant for transport and display with the plant start intended to be removed and planted into soil. Clearly, the kit and package of the Patton patent is not and cannot perform a function like that of the invention.

As set out above, with this amendment, applicant believes their Claim 1 now clearly sets out the invention that is distinguished, as set out above, from the structure of the Patton patent, overcoming, applicant believes, the 35 USC 102(b) rejection of Claims 1, 4 and 5. Further, with respect to the rejection of Claims 2 and 3 citing 35 USC 103, applicant submits that, with the amendments to Claim 1 that distinguish the invention from a reasonable interpretation of the Patton patent, that Claim 1 should now be allowable over the Patton patent as well as the combination of the Patton and Melvold patents. Which Melvold patent was cited only for a use of a nylon material and, of course, is like the Patton patent, directed to growing plants for transplant into soil. Accordingly, with the amendments here made to Claim 1 and the arguments presented, applicant believes that Claim 1, the sole independent claim of the case, and the claims dependent thereon, Claims 2 through 5 should now be in condition for allowance and respectfully requests same.

Respectfully submitted,



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### **CERTIFICATE OF MAILING**

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M. Reid Russell

June 7, 2004

Date

**Items included:**

Amendment and Response with Mailing Certificate ( 4 pages)

Copy of the Amended Claims

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